

Decision 03-10-021

October 2, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority to Increase Electric and Gas Revenue Requirements to Reflect an Attrition Revenue Adjustment for the Year 2002.

Application 02-06-019

ORDER DENYING APPLICATION
OF PACIFIC GAS AND ELECTRIC COMPANY
FOR REHEARING OF DECISION 03-03-034

I. BACKGROUND

On January 25, 2001, in Application 97-12-020, Pacific Gas and Electric Company ("PG&E") filed a petition for modification of Decision 00-07-050, requesting that it be excused from having to file a notice of intent on May 1, 2001, for general increase in rates beginning in 2002. On October 25, 2001, the Commission issued Decision 01-10-059, granting this request and allowing PG&E to file an application for a general increase in rates to take effect in 2003. As the Commission explained, "We believe that it is now too late to initiate a TY 2002 GRC in order to have new rates in place by January 1, 2002." Mimeo at 3. It also pointed out that a new, more complete record may be necessary before PG&E should be authorized any increase in rates: "Developments following the deregulation of the wholesale electricity market have changed utility operations and current rates may no longer reflect PG&E's cost of service." *Id.* at 9. In addition, the Commission invited PG&E and the other parties to comment on whether a proceeding should be held to address PG&E's need for an increase in rates to offset attrition in rate of return.

On January 17, 2002, PG&E filed a motion requesting that "the Commission expeditiously issue an interim decision in this proceeding making whatever attrition rate

adjustment the Commission may eventually grant PG&E for 2002 effective as of the effective date of the requested interim decision.” Motion at 10. On April 22, 2002, the Commission issued Decision 02-04-056, granting PG&E’s motion to the extent that, “[i]n the event that the Commission authorizes an Attrition Rate Adjustment (‘ARA’) for PG&E for 2002, such authorization may be made effective as of the effective date of this Interim Order or such later date as may be determined by the Commission.” Mimeo at 8. In doing so, the Commission emphasized that “we are simply preserving our option to authorize an ARA that could be made effective today.” Id. at 3. Accordingly, “Nothing in today’s decision assures PG&E an ARA for 2002.” Id.

On June 11, 2002, PG&E filed the present application, seeking authorization “to increase its base revenue requirements for electric and gas distribution, customer services, and Humboldt Nuclear SAFSTOR activities to reflect an attrition rate adjustment (ARA) for the year 2002.” Application at 1 (footnote omitted). More specifically, PG&E requests an increase of \$76,207,000 for distribution of electricity, \$19,480,000 for distribution of natural gas, and \$139,000 for nuclear decommissioning, for a total of \$96,326,000. It reasons, “[T]hese revenue requirement increases are necessary to reflect PG&E’s rate base growth due to an estimated \$1,000,000,000 in capital additions for 2002, as well as PG&E’s expense growth in such areas as wages and salaries and the costs of goods and services.” Id. at 1-2. PG&E estimates that it would at present rates earn a return on ratebase in 2002 of 8.56 percent for electrical distribution, compared with an authorized return of 9.12 percent, and 8.62 percent for distribution of natural gas, compared with an authorized return of also 9.12 percent.

On July 19, 2002, The Office of Ratepayer Advocates (“ORA”) filed a protest to PG&E’s application, recommending that it be denied. In its view, PG&E is not automatically entitled to an allowance to offset attrition in rate of return, any attrition in rate of return is the direct result of PG&E’s failure to seek a timely general increase in rates, and PG&E should not be granted any increase in rates until its costs and revenues are fully reviewed. On July 29, 2002, PG&E filed a reply to ORA’s protest, requesting that it be rejected.

On March 13, 2003, following submission of the case on the pleadings, the Commission issued Decision 03-03-034, denying the relief requested by PG&E. As the Commission explained, “In our review of PG&E’s recent rate case it is apparent that PG&E has not had a full review of its costs since its 1999 general rate case decision D.00-02-046.” Mimeo at 8. In this vein, “The recorded numbers are too stale and the escalation rates are too uncertain to sustain a finding increasing rates by \$96.3 million to meet 2002 costs and rate base.” Id. at 10. Furthermore, “While it is true that the purpose of attrition is to provide utilities with revenue relief in years between GRCs, attrition is not an entitlement and it certainly is not automatic.” Id. at 14. Thus, “Taking PG&E’s segmented numbers at face value the differences . . . do not warrant the extraordinary relief of an attrition rate increase.” Id.

On April 16, 2003, PG&E filed an application for rehearing of Decision 03-03-034. According to PG&E, “[T]he Commission’s denial of attrition relief was in error because D.03-03-034 applied the wrong legal standard and because its findings were not supported by substantial evidence.” Application at 1. On May 8, 2003, ORA, Aglet Consumer Alliance (“Aglet”), and The Utility Reform Network (“TURN”) submitted a motion for leave to file a late response to PG&E’s application for rehearing, arguing that the Commission is not required to grant a utility’s request for relief from attrition in rate of return and that PG&E did not on the basis of clear and convincing evidence establish that it should now be authorized such relief.

II. DISCUSSION

The Commission has carefully considered each argument presented by PG&E and concludes that no ground for rehearing has been shown. PG&E urges that the Commission reconsider its decision to require that a new application be filed for authorization to increase rates to offset attrition in rate of return. The Commission finds, however, that PG&E has failed to identify any legal error in that decision. PG&E’s application for rehearing of Decision 03-03-034 is therefore denied. At the same time, since no party will be unfairly disadvantaged thereby, Aglet, ORA, and TURN should be allowed to file a response to PG&E’s application for rehearing.

A. The Commission Used The Appropriate Standard In Reviewing PG&E's Request For Relief From Attrition In Rate Of Return.

PG&E argues, “[B]y characterizing attrition relief as ‘extraordinary,’ the Commission in D.03-03-034 implies that the legal standard for granting attrition relief is exceptional or remarkable.” Application at 4. This argument begs the real question, however, whether PG&E has justified any increase in rates to offset attrition in rate of return. The Commission has emphasized, “It is PG&E’s obligation generally to support its application through clear and convincing evidence.” Re Pacific Gas and Electric Co. Decision 00-02-046, mimeo, at 535. Furthermore, whether termed “extraordinary” or not, “[A]ttrition mechanisms represent an exception to the general strategy of examining one test year out of every three years and providing the utility an incentive to improve its productivity” Id., at 472. As the Commission also observed in Decision 00-02-046, “[T]here is no inalienable right to an interim increase in rates during a multi-year rate case cycle.” Id., at 471; see also Re Pacific Gas and Electric Co., 69 CPUC 2d 691, 695 (1996). Simply stated, “[T]he attrition mechanism is not an entitlement.” Re Southern California Gas Co., 52 CPUC 2d 471, 492 (1993). “Nor is it a method of insulating the company from the economic pressures which all businesses experience.” Id. Indeed, “Neither the Constitution nor case law has ever required automatic rate increases between general rate case applications.” Id. In sum, under longstanding practice, relief from attrition in rate of return outside the ordinary cycle of ratemaking requires a full showing of actual need, as in any request for authorization to increase rates. Accordingly, PG&E has failed to show that the Commission used an inappropriate standard in reviewing a request for such relief.

B. Decision 03-03-034 Is Well Supported By The Record.

PG&E further argues, “[T]he Commission in D.03-03-043 commits legal error because its denial of attrition relief for 2002 is not supported by substantial evidence in light of the whole record.” Application at 5. To the contrary, Decision 03-03-034 is

well supported by the record. It makes quite clear that PG&E failed to justify any increase in rates:

The recorded numbers are too stale and the escalation rates too uncertain to sustain a finding increasing rates by \$96.3 million to meet 2002 costs and rate base. There have been great changes in the economy of California and the United States in the six years since PG&E's last recorded costs were placed on a record before us. There have been even greater changes in the economic status of PG&E. We cannot assume that merely escalating 1996 and 1997 costs and 1999 rate base (at escalation rates that may have no relation to current interest rates) will result in an accurate rendering of PG&E's costs and rate base in 2002. The gap between recorded and estimated is too great.

Mimeo at 10. On this basis, the Commission properly determined that no change should be made until PG&E files an application for a general increase in rates, and a more complete record is developed. Id. PG&E's argument thus lacks merit that the Commission's denial of relief from attrition in rate of return is not supported by substantial evidence.

C. Aglet, ORA, And TURN Should Be Allowed To File A Late Response To PG&E's Application For Rehearing

Under Rule 86.2 of the Commission's Rules of Practice and Procedure, the response of Aglet, ORA, and TURN to PG&E's application for rehearing was due no later than May 1, 2003, but it was filed on May 8, 2003, along with a motion requesting leave to file it late. They said, "[N]o party will be disadvantaged by filing of the joint response during the week after the due date." Motion at 2. We agree, and therefore grant their motion for leave to file a late response.

III. CONCLUSION

PG&E has failed to demonstrate that the Commission committed legal error in denying PG&E's request to increase rates charged for electrical service to offset attrition in rate of return.

THEREFORE IT IS ORDERED that:

1. The motion of Aglet, ORA, and TURN for leave to file a late response to PG&E's application for rehearing of Decision 03-03-034 is granted.
2. PG&E's application for rehearing of Decision 03-03-034 is denied.
3. This proceeding is closed.

This order is effective today.

Dated October 2, 2003, at San Francisco, California.

Michael R. Peevey
President
Carl W. Wood
Loretta M. Lynch
Geoffrey F. Brown
Susan P. Kennedy
Commissioners